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**E-FILED ON NOVEMBER 7, 2006**

Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

In re:  
 USA CAPITAL FIRST TRUST DEED FUND,  
 LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Affects:  
☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

**RESPONSE OF SCHWARTZER &  
 MCPHERSON LAW FIRM TO  
 OBJECTION TO ITS INTERIM FEE  
 ORDER FILED BY THE  
 COMMITTEE FOR EQUITY  
 HOLDERS OF USA CAPITAL FIRST  
 TRUST DEED FUND, LLC (AFFECTS  
 ALL DEBTORS)**

Date: September 28, 2006  
 Time: 9:30 a.m.

The Schwartzer & McPherson Law Firm (the "Firm"), attorneys for the "Debtors" hereby  
 files this Response to the objection to the Firm's proposed first interim fee order (the "Order")  
 filed by the Official Committee of Equity Holders of USA Capital First Trust Deed Fund, LLC  
 (the "Objection"). In support of its Response, the Firm respectfully states as follows:

1           1.       The Objection disputes the proposed allocation of fees and expenses to USA  
 2 Capital First Trust Deed Fund, LLC (the “First Fund”) and states that the Firm should allocate, on  
 3 an interim basis 9.5% of its fees incurred in *all the cases* to First Fund.<sup>1</sup> The Firm asserts (a) that  
 4 its allocation to First Fund of 9% of the fees and costs previously allocated to USA Capital  
 5 Commercial Mortgage, Inc. (“USACM”) is appropriate (or, possibly, an underestimate) and (b)  
 6 the difference is immaterial for a temporary allocation. In the original application, the Firm  
 7 allocated 91.6% of its fees and expenses to USACM. The balance of its fees and expenses were  
 8 identified as being related to services for particular Debtors and allocated among the other estates.  
 9 The Official Committee of Unsecured Creditors objected to this allocation. At the hearing, Ms.  
 10 McPherson said, “[w]ith regard to the allocation issue, we do believe our allocation that we have  
 11 made is appropriate; however, we have also agreed to the temporary allocation of the fees that we  
 12 have allocated to Commercial Mortgage, so that it's 80/10/10, and I'll go back and look at those  
 13 fees again” (page 7, lines 14-18 of transcript of hearing). There was no further comment on the  
 14 allocation issue in this part of the hearing. See partial transcript attached hereto as **Exhibit “1.”**

15           2.       There are several alternatives the Court may consider:

16           a.       The proposed Order took 9% of the fees previously allocated to USACM  
 17 (\$244,438) and reallocated them to First Fund. Adding the 9% (\$21,199.42) to the amounts  
 18 previously identified as fees for services solely for the benefit of First Fund (\$11,300) resulted in a  
 19 fee allocation to First Fund of \$33,291.46.

20           b.       If we took 10% of the fees previously allocated to USACM (\$24,443) and  
 21 reallocated them to First fund, the result would be a fee allocation to First Fund of \$35,743.

22           c.       If we took 9.5% of the total fees allowed in the jointly administered cases  
 23 (\$265,016) and allocated them to First Fund, the result would be a fee allocation to First Fund of  
 24 \$25,176.52.

25           d.       If we took 10% of the total fees allowed in the jointly administered cases and  
 26 allocated them to First Fund, the result would be a fee allocation to First Fund of \$26,501.

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28           <sup>1</sup> The wording in the Objection is “an amount not to exceed 9.5% of the fees sought by the  
 debtors’ professionals in the first interim fee application.”

1 In addition, reimbursement of allowed costs in the amount of \$5,465.09 should be  
2 allocated in the same manner as the fees.

3 These alternatives all stay within the parameters of the *almost made* agreement of the  
4 parties. However, the Court, in its discretion could consider other alternatives. It is questionable  
5 whether dealing with the very active First Fund Committee's counsel has only resulted in a 9.5%  
6 increase in fees and costs in this case. A 25% allocation (based upon there being four Official  
7 Committees) would be more appropriate. An alternative would be to allocate the fees in proportion  
8 to the fees generated by each of the counsel for the four Official Committees on the assumption  
9 that the more work performed by a Committee's counsel generates more work for Debtors'  
10 counsel.

11 a. Using the allocation pro rata based on the number of Committees, the allocation  
12 would be:

13	(i) USACM (2 Committees)	\$132,508
14	(ii) First Fund (1 Committee)	\$66,254
15	(iii) Diversified Fund (1 Committee)	\$66,254

16 b. Using the allocation based on the amount of attorneys' fees incurred by the various  
17 Committees for each entity, the allocation would be:

18	(i) USACM (\$485,637/\$1,751,689x\$265,016)	\$73,473
19	(ii) First Fund (\$723,926/\$1,751,689x\$265,016)	\$109,524
20	(iii) Diversified Fund (\$542,126/\$1,751,689x\$265,016)	\$82,019

21 3. Based on the hearing transcript, there is a question of whether the 80/10/10  
22 allocation was meant to apply to the total fees in the joint cases or only to the fees then allocated to  
23 USACM. Counsel for the Debtors intended one allocation method, counsel for the First Fund  
24 Committee meant another. Counsel for the Debtors intended that the 80/10/10 allocation would be  
25 made from the fees allocated to USACM because (a) Debtors' counsel had already made its own  
26 allocation to each Debtor, i.e., fees had already been allocated to First Fund and Diversified Fund  
27 for work that was solely related to those entities and (b) the 80/10/10 allocation was made at the  
28

request of counsel for the USACM Unsecured Creditors Committee based upon that Committee's belief that too much of the fees had been allocated to USACXM.

### **POINTS AND AUTHORITIES**

Joint administration is designed in large part to promote procedural convenience and cost efficiencies which do not affect the substantive rights of claimants or the respective debtor estates. *Unsecured Creditors Committee v. Leavitt Structural Tubing Co.*, 55 B.R. 710 (N.D.Ill.1985), *aff'd*, 796 F.2d 477 (7th Cir.1986).

*In re McKenzie Energy Corp.*, 228 B.R. 854, 874 (Bankr. S.D.Tex. 1998).

The purpose of joint administration is to make case administration easier and less expensive than in separate cases, without affecting the substantive rights of creditors (including inter-debtor claims). There is no merging of assets and liabilities of the debtors, and inter-entity claims survive. Creditors of each debtor continue to look to that debtor for payment of their claims. The respective debtors are required to maintain separate banking and accounting records. **Any professionals appointed in more than one related case must keep separate time and expense records, and must make separate applications for employment and for compensation.**

*In re Parkway Calabasas Ltd.*, 89 B.R. 832, 836 (Bankr. C.D.Cal. 1988).

Even though three cases were administratively consolidated ("joint administration"), "[a]ny professionals appointed in more than one related case must keep separate time and expense records, and must make separate applications for employment and for compensation." *In re Parkway Calabasas Ltd.*, 89 B.R. 832, 836 (Bankr.C.D.Cal.1988). "The purpose of joint administration is to make case administration easier and less expensive than in separate cases, without affecting the substantive rights of creditors (including inter-debtor claims). There is no merging of assets and liabilities of the debtors ...". *Id.*

*Matter of Hutter Const. Co., Inc.*, 126 B.R. 1005, 1012 (Bankr. E.D.Wis. 1991).

The Court's decision to approve joint administration was based on the expected savings of administrative fees and costs. These savings are only possible by having one set of restructuring personnel and attorneys even in the face of possible inter-company claims. *In re BH & P, Inc.*, 949 F.2d 1300, 1312 (3<sup>rd</sup> Cir. 1991) ("Considering the advantages of joint administration and the place for single trustees in that process, we are not prepared to say that interdebtor claims mandate disqualification of the trustee in every instance."). See also *In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 189 B.R. 874, 881 (Bankr. E.D.N.Y. 1995) ("Finally, we note that representation of a creditor and a debtor in the same case is not by itself a basis to deny fees under

1 11 U.S.C. § 328(c). As set forth above, 11 U.S.C. § 327(c), which is incorporated into 11 U.S.C. §  
 2 328(c), provides that "a person is not disqualified for employment under this section solely  
 3 because of such person's employment by or representation of a creditor, unless there is an  
 4 objection by another creditor or the United States trustee, in which case the court shall disapprove  
 5 such employment if there is an actual conflict of interest.").

### 6 CONCLUSION

7 A majority of the Firm's efforts in these cases has involved matters common to the three  
 8 estates (USACM, First Fund and Diversified Fund).<sup>2</sup> This joint approach to administration has  
 9 saved an enormous amount of duplication of effort and expense to these three estates. In situations  
 10 where expenses of administration have not been clearly applicable to one estate, the Firm allocated  
 11 the fees of such USACM. All of the out of pocket expenses were also allocated to USACM. By  
 12 using this approach to allocation, the Firm probably allocated all of the cost savings of joint  
 13 administration to First Fund and Diversified Fund. A reallocation would be appropriate. The  
 14 Firm attempted to do this by allocating 10% of USACM fees to First Fund and 10% to Diversified  
 15 Fund.

16 There is no dispute that the Court approved legal fees in the amount of \$265,016.00 and  
 17 reimbursement for costs expended in the amount of \$5,465.09 for a total of \$270,481.09 for the  
 18 period April 13, 2006 through July 31, 2006, and authorized the Debtors to pay the fees and costs  
 19 allowed the Schwartzer & McPherson Law Firm. From the Firm's point of view, there is no  
 20 conflict because each of these three Debtors has (or will have) the ability to pay administrative

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28 <sup>2</sup> USA Capital Realty Advisors, LLC and USA Securities, LLC have few assets, no operations and few, if any, creditors other than investors who may claim mismanagement or misrepresentation.

1 expenses. The question of allocation is left to the Court in the absence of a meeting of the minds  
2 by the parties.

3 DATED: November 7, 2006

4 Respectfully submitted by

5  
6 /s/ Jeanette E. McPherson

7 Lenard E. Schwartz, Esq.

8 Jeanette E. McPherson, Esq.

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12 Attorneys for Debtors and Debtors in Possession

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**CERTIFICATE OF SERVICE**

1. On November 7, 2006 I served the following document(s):

a. RESPONSE OF SCHWARTZER & MCPHERSON LAW FIRM TO OBJECTION TO ITS INTERIM FEE ORDER FILED BY THE COMMITTEE FOR EQUITY HOLDERS OF USA CAPITAL FIRST TRUST DEED FUND, LLC (AFFECTS ALL DEBTORS)

2. I served the above-named document(s) by the following means to the persons as listed below:

☒ a. **By ECF System:**

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13 ☐ b. **By United States mail, postage fully prepaid:**

14 ☐ c. **By Personal Service**

15 I personally delivered the document(s) to the persons at these addresses:

16 ☐ For a party represented by an attorney, delivery was made by handing the  
 17 document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or  
 18 other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place  
 19 in the office.

20 ☐ For a party, delivery was made by handing the document(s) to the party or by  
 21 leaving the document(s) at the person's dwelling house or usual place of abode with someone of  
 22 suitable age and discretion residing there.

23 ☐ d. **By direct email (as opposed to through the ECF System)**

24 Based upon the written agreement to accept service by email or a court order, I  
 25 caused the document(s) to be sent to the persons at the email addresses listed below. I did not  
 26 receive, within a reasonable time after the transmission, any electronic message or other indication  
 27 that the transmission was unsuccessful.

28 ☐ e. **By fax transmission**

Based upon the written agreement of the parties to accept service by fax  
 transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed  
 below. No error was reported by the fax machine that I used. A copy of the record of the fax  
 transmission is attached.

**I declare under penalty of perjury that the foregoing is true and correct.**

Signed on: November 7, 2006

LIA DORSEY

(Name of Declarant)

/s/ LIA DORSEY

(Signature of Declarant)

# **EXHIBIT “1”**

UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA  
 LAS VEGAS, NEVADA

In re: USA COMMERCIAL MORTGAGE	)	SEPTEMBER 28, 2006
COMPANY,	)	E-Filed: 11/01/06
	)	
Debtor.	)	Case No.
	)	BK-S-06-10725-LBR
	)	Chapter 11
_____ USA COMMERCIAL MORTGAGE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No.
	)	06-01146-LBR
WELLS FARGO BANK, N.A., et al.,	)	
	)	
Defendants.	)	
_____ USA COMMERCIAL MORTGAGE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No.
	)	06-01179-LBR
STANDARD PROPERTY DEVELOPMENT,	)	
LLC,	)	
Defendant.	)	
_____ USA COMMERCIAL MORTGAGE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No.
	)	06-01167-LBR
ROBERT J. KEHL, et al.,	)	
	)	
Defendants.	)	
_____	)	

PARTIAL TRANSCRIPT OF PROCEEDINGS  
 OF  
 (06-01146) SCHEDULING CONFERENCE RE: COMPLAINT, NO. 10  
 AND  
 MOTION FOR RELIEF FROM STAY, NO. 1159  
 AND  
 INTERIM APPLICATION FOR COMPENSATION  
 FOR SHLOMO S. SHERMAN, ESQ., NO. 1232  
 AND  
 Proceedings recorded by electronic sound recording;  
 transcript produced by transcription service.

1                                   MOTION FOR AN ORDER  
2           PURSUANT TO 11, USC, SECTIONS 105(A), 327(A), AND 331  
3           AUTHORIZING RETENTION OF PROFESSIONALS UTILIZED BY DEBTORS  
4           IN THE ORDINARY COURSE OF BUSINESS, NO. 1205  
5                                   AND  
6           INTERIM APPLICATION FOR COMPENSATION  
7           FOR STUTMAN, TREISTER & GLATT, P.C., NO. 1232  
8                                   AND  
9           INTERIM APPLICATION FOR COMPENSATION  
10           FOR ALVAREZ & MARSAL, LLC, NO. 1232  
11                                  AND  
12           INTERIM APPLICATION FOR COMPENSATION, NO. 1249  
13                                  AND  
14           FIRST APPLICATION FOR COMPENSATION  
15           FOR THE PERIOD JUNE 1, 2006 THROUGH JULY 31, 2006,  
16           FOR ORRICK, HERRINGTON & SUTCLIFFE, LLP, NO. 1232  
17                                  AND  
18           APPLICATION FOR COMPENSATION  
19           FOR GORDON & SILVER, LTD., NO. 1220  
20                                  AND  
21           FIRST APPLICATION FOR COMPENSATION  
22           FOR THE PERIOD JUNE 9, 2006 THROUGH JULY 31, 2006,  
23           FOR BECKLEY SINGLETON, CHTD., NO. 1232  
24                                  AND  
25           FIRST APPLICATION FOR COMPENSATION  
                                AND REIMBURSEMENT OF EXPENSES FOR,  
(1), MESIROW FINANCIAL INTERIM MANAGEMENT, LLC,  
AS CRISIS MANAGERS FOR THE DEBTORS  
AND, (2), THOMAS J. ALLISON  
OF MESIROW FINANCIAL INTERIM MANAGEMENT, LLC,  
AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS  
AND THE EMPLOYMENT OF CERTAIN TEMPORARY EMPLOYEES  
FOR THE PERIOD APRIL 14, 2006 THROUGH JULY 31, 2006,  
FOR MESIROW FINANCIAL INTERIM MANAGEMENT, LLC, NO. 1232  
AND  
FIRST APPLICATION FOR COMPENSATION  
AND REIMBURSEMENT OF EXPENSES  
FOR LEWIS AND ROCA, LLP, NO. 1232  
AND  
FIRST APPLICATION FOR COMPENSATION  
AND REIMBURSEMENT OF EXPENSES  
FROM APRIL 14, 2006 THROUGH JULY 31, 2006,  
FOR SCHWARTZER & McPHERSON LAW FIRM, NO. 1232  
AND  
FIRST APPLICATION FOR COMPENSATION  
PURSUANT TO 11, USC, SECTIONS 330 AND 331  
FOR THE PERIOD APRIL 13, 2006 THROUGH JULY 31, 2006,  
FOR RAY, QUINNEY & NEBEKER, P.C., NO. 1232  
AND

1 MOTION FOR APPROVAL OF APPOINTMENT OF A SUCCESSOR TRUSTEE  
2 FOR ITS DEFINED BENEFIT PENSION PLAN  
3 AND TO FREEZE THE PLAN EFFECTIVE SEPTEMBER 30, 2006,  
4 NO. 1236

5 AND  
6 FIRST INTERIM APPLICATION FOR COMPENSATION  
7 FOR OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS  
8 OF USA CAPITAL FIRST TRUST DEED FUND, LLC,  
9 FOR THE PERIOD MAY 10, 2006 THROUGH JULY 31, 2006, NO. 1241  
10 AND

11 (06-01179) MOTION FOR PRELIMINARY INJUNCTION, NO. 5  
12 AND

13 ORDER SHORTENING TIME RE: MOTION TO COMPEL  
14 CONFIDENTIAL DISCLOSURE OF MEMBER LIST, NO. 1346

15 AND  
16 APPLICATION TO EMPLOY THOMAS J. ALLISON  
17 AND MESIROW FINANCIAL INTERIM MANAGEMENT, LLC,  
18 AS CHIEF RESTRUCTURING OFFICER AND CRISIS MANAGERS  
19 AND DEBTOR'S MOTION FOR ORDER AUTHORIZING,  
20 (1), THE EMPLOYMENT AND RETENTION  
21 OF MESIROW FINANCIAL INTERIM MANAGEMENT, LLC,  
22 AS CRISIS MANAGERS FOR THE DEBTORS,  
23 AND, (2), THE DESIGNATION OF THOMAS J. ALLISON  
24 OF MESIROW FINANCIAL INTERIM MANAGEMENT, LLC,  
25 AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS  
AND THE EMPLOYMENT OF CERTAIN TEMPORARY EMPLOYEES, NO. 6

AND  
(06-01167) MOTION FOR SUMMARY JUDGMENT  
AND FOR ORDER DIRECTING RELEASE OF FUNDS, NO. 97

AND  
APPLICATION TO EMPLOY SCHWARTZER & McPHERSON LAW FIRM  
AS COUNSEL UNDER GENERAL RETAINER, NO. 21

AND  
APPLICATION TO EMPLOY RAY, QUINNEY & NEBEKER, P.C.,  
AS COUNSEL FOR THE DEBTOR, NO. 23

AND  
MOTION TO REJECT PERSONAL PROPERTY LEASES, NO. 1131  
VOLUME 1

BEFORE THE HONORABLE LINDA B. RIEGLE  
UNITED STATES BANKRUPTCY JUDGE

Thursday, September 28, 2006

9:30 a.m.

Court Recorder: Helen C. Smith

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

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1 APPEARANCES (Cont.)

2 Also Present: THOMAS J. ALLISON  
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1 (Court previously convened at 09:44:25 a.m.)

2 (Partial transcript at 12:27:54 p.m.)

3 THE COURT: Okay. The Schwartz McPherson.

4 (Colloquy not on the record.)

5 MS. MCPHERSON: Your Honor, this is our first  
6 application for fees in the amount of \$265,016, costs of  
7 \$5,465.09.

8 In light of the amount of time spent, the four months,  
9 and the fact that we're representing five debtors, we  
10 believe this amount is reasonable.

11 It's reasonable in light of that representation, the  
12 amount of time, and also reasonable in light of the other  
13 professionals' fees and costs in this case.

14 With regard to the allocation issue, we do believe our  
15 allocation that we have made is appropriate; however, we  
16 have also agreed to the temporary allocation of the fees  
17 that we have allocated to Commercial Mortgage, so that it's  
18 80/10/10, and I'll go back and look at those fees again.

19 Some of our time has been spent representing Commercial  
20 Mortgage in litigation, so it really does clearly belong to  
21 Commercial Mortgage.

22 With regard to the objections, we too have received an  
23 objection from the U.S. Trustee's Office, and we have tried  
24 to work out those issues with the U.S. Trustee and just have  
25 not come to a resolution.

1 The U.S. Trustee has first noted or stated that we only  
2 provided Mr. Schwartz's rate in the employment  
3 application.

4 We did provide the other rates in the declaration to  
5 that employment application which provides for the rates of  
6 other lawyers in the firm and for paralegals.

7 The next objection is to clerical issues. The  
8 objection is specifically to Mr. Schwartz's time spent  
9 talking with Clark Fenneran (phonetic) and rescheduling the  
10 IDI (phonetic). Point two hours was spent on that.

11 We feel that that time was de minimus and in light of  
12 the fact that it probably got done much quicker with  
13 Mr. Schwartz talking to Mr. Fenneran and the fact that,  
14 you know, the U.S. Trustee's Office often needs to talk to a  
15 lawyer and actually make sure the debtor can appear and have  
16 the debtor's representative there, so we don't believe that  
17 objection is appropriate.

18 And, also, an objection is made to point 3 hours that  
19 Mr. Schwartz reviewed a newspaper article. We believe  
20 that time is appropriate.

21 In this case, we have investors calling. We need to  
22 know what information that they have read, and  
23 Mr. Schwartz has attended meetings with investors, so we  
24 believe that time was spent appropriately because he needs  
25 to be aware of what has been published about the case.

1 The next objection is to lumping of time in the total  
2 amount of 4.9 hours. With regard to this lumping issue,  
3 it's similar to Ms. Jarvis in that the time that was entered  
4 it may appear to be lumping; however, it is time that all  
5 relates to one topic.

6 For instance, 1.9 hours was objected to on June 9th  
7 where the time entered states work on DIP financing and then  
8 a semicolon, E-mails regarding OST. That's all relating to  
9 the DIP-financing motion.

10 The next entry is 2.3 hours on the same date, June 9th,  
11 2006, work on professional-payment protocol, E-mails re OST,  
12 research, add legal authority. That all relates to the  
13 professional-payment protocol application.

14 The other objection to lumping is 1.2 hours on  
15 May 10th. The entry is review letter from J. Jorgenson  
16 (phonetic) at Wells Fargo Bank, research issues, draft  
17 letter to C. Carlyon, counsel for Wells Fargo, regarding the  
18 collection account, E-mailed a client, review comments.  
19 Again, that's all related to the Wells Fargo issue. Now,  
20 the --

21 THE COURT: Now, on the Wells Fargo before I get,  
22 I don't see any application for fees in the Wells Fargo case  
23 for your attorneys fees. Do you intend to apply for that  
24 because you asked for it in the prayer?

25 MR. SCHWARTZER: Your Honor, Mr. Huston is special

1 counsel in the interpleader action, and what happened is he  
2 was not aware of the deadline for getting the application in  
3 for today's hearing, but he would be covered by the  
4 interim --

5 THE COURT: But I meant --

6 MR. SCHWARTZER: -- protocol.

7 THE COURT: -- your fees. You're billing for the  
8 Wells Fargo action.

9 MS. McPHERSON: Yes.

10 MR. SCHWARTZER: Yes.

11 MS. McPHERSON: Yes, your Honor. We have put it  
12 in our application.

13 THE COURT: No. My point is --

14 MS. McPHERSON: Oh.

15 THE COURT: -- why did -- all right. In the  
16 interpleader, asking in the interpleader for your fees.  
17 You're entitled --

18 MS. McPHERSON: You know, in --

19 THE COURT: You --

20 MS. McPHERSON: In the --

21 THE COURT: The complaint asked for your attorneys  
22 fees.

23 MS. McPHERSON: Yeah. Other than in the prayer?

24 THE COURT: Right.

25 MS. McPHERSON: Wait.



1 THE COURT: No. It's in the prayer, and that's  
2 it, but nobody has done anything to -- usually, in an  
3 interpleader, you make your motion for summary judgment and  
4 get your fees in the beginning.

5 MR. SCHWARTZER: Right now, I'm not representing  
6 the debtor --

7 THE COURT: Okay.

8 MR. SCHWARTZER: -- in that. Mr. Huston will, and  
9 I think that's a very good idea that we will provide him  
10 with a list of our fees that were incurred with regard to  
11 the interpleader. So when he --

12 THE COURT: And I guess --

13 MR. SCHWARTZER: -- does that motion, it will ask  
14 for those funds.

15 THE COURT: Now, you know, I don't want to  
16 predetermine it, but the point is you had asked for it in  
17 the prayer, and I guess, you know, I think under the regular  
18 statutes you might be entitled to it. But at least,  
19 there's --

20 MR. SCHWARTZER: Yes.

21 MS. McPHERSON: Okay.

22 THE COURT: -- an option there.

23 MS. McPHERSON: Your Honor, we'll take care --

24 THE COURT: And I guess --

25 MS. McPHERSON: -- of that.

1 THE COURT: -- I'm questioning, too, if Mr. Huston  
2 is doing this case is why does your firm have so much time  
3 on both of those litigation matters.

4 MR. SCHWARTZER: Well, first of all, there was a  
5 point in time when we hadn't made the decision that we were  
6 going to hire special counsel for that purpose.

7 With the issue that was just -- the question that was  
8 just made, that had to do with keeping the collection  
9 account open at Wells Fargo --

10 THE COURT: Oh.

11 MR. SCHWARTZER: -- for an additional period of  
12 time because it took awhile before the new accounts were  
13 opened at Bank of America, and we didn't want the  
14 Wells Fargo account --

15 THE COURT: Okay.

16 MR. SCHWARTZER: -- closed because some borrowers  
17 might still only have the wiring instructions to the  
18 Wells Fargo account.

19 THE COURT: Okay.

20 MR. SCHWARTZER: And that was accomplished, and  
21 now the account is closed.

22 THE COURT: Oh, okay. I'm sorry. Okay. And on  
23 the other litigation matter, what -- I thought I had your  
24 application out here, so I'm going to have to remember my  
25 notes on that, but the --

1 MS. McPHERSON: The Wells --

2 THE COURT: The other litigation matter that  
3 Mr. Huston is --

4 MS. McPHERSON: He --

5 THE COURT: There was a fair amount of time billed  
6 on that. So if --

7 MS. McPHERSON: What --

8 THE COURT: -- independent counsel is doing that,  
9 why is your firm billing?

10 MS. McPHERSON: Well --

11 MR. SCHWARTZER: Your Honor --

12 MS. McPHERSON: Yeah.

13 MR. SCHWARTZER: -- again, to answer that  
14 question, what we did is when we -- that action was to  
15 recover \$100,000 that was paid out postpetition --

16 THE COURT: Uh-huh.

17 MR. SCHWARTZER: -- on a check. We considered  
18 that a separate matter, but then we realized because it was  
19 paid out of the investor account which is the account that's  
20 their matter of dispute of the interpleader action --  
21 really, the money only comes into these divided up in the  
22 interpleader action.

23 We decided it made more sense to consolidate the two  
24 actions, have Mr. Huston handle it all, and we did file, and  
25 I think it was at the last omnibus hearing the Court granted

1 the motion to consolidate.

2 THE COURT: Okay.

3 MR. SCHWARTZER: And that's why, but we started  
4 that -- actually, that action started before the  
5 interpleader action --

6 THE COURT: Oh, okay.

7 MR. SCHWARTZER: -- had been started.

8 THE COURT: All right.

9 MS. McPHERSON: Your Honor, that Wells Fargo  
10 action was filed about a month before the interpleader  
11 action, and they have been consolidated.

12 With regard to the interpleader action, we did initiate  
13 it, discovered one of the defendants is another debtor  
14 entity.

15 THE COURT: Okay.

16 MS. McPHERSON: And that's why we stepped out at  
17 that point, and then they have been consolidated.

18 The last objected-to entry is dated from April 20th for  
19 2.6 hours. The entry is work on motions to limit notice,  
20 work on motion to extend time to file schedules, and employ  
21 BMC, and those do appear to be lumped.

22 However, we believe in light of the amount of time  
23 involved that it really is insignificant, and that it can be  
24 really determined how much time was spent.

25 The next objection is to charges that the U.S.

1 Trustee's Office says are for nonlegal services. On  
2 June 15th, Mr. Schwartzer entered in time of 2.1 hours for  
3 assisting in filing the schedules. That really should be  
4 more appropriately called reviewing the schedules that were  
5 to be filed.

6 You'll recall that that's when the amendments were  
7 filed, and they were quite massive, and they were coming in  
8 on that day.

9 So those objections to fees total \$3,187. We don't  
10 believe the objection is appropriate, and that we have  
11 appropriately responded to any requests that need to be  
12 addressed.

13 The next objections are to expenses billed. We have an  
14 objection to delivery charges of \$267.50. Our firm does not  
15 have an in-house runner. We use an outside service, and we  
16 do not make money off of the delivery charges.

17 We pay a flat fee, and then we allocate it based on the  
18 runs that are made, and we have determined that \$5 is  
19 appropriate, and we essentially break even at that point.

20 We'd also like to note that with regard to these  
21 delivery charges we always put them in our fee applications.  
22 They have been granted in the past, and other firms do in  
23 the community.

24 And the U.S. Trustee's Office has not objected to other  
25 fee applications that also contain these delivery charges of

1 either that amount or more.

2 And while we did have the opportunity to object to  
3 those fees as the U.S. Trustee's Office has pointed out, we  
4 don't believe they're unreasonable, and that's why we didn't  
5 object.

6 But we do want some consistency on these objections,  
7 and we believe that if one firm gets paid for delivery  
8 charges all of the firms have to be paid for delivery  
9 charges of similar amounts.

10 We've got an objection to the bill for a conference  
11 room of \$1,198. We have submitted the invoice to that. It  
12 was money spent on a conference room for everybody to get  
13 together and meet, and those were the actual charges.

14 The last objection to the expenses is for Westlaw,  
15 \$1,452.42. We think this amount is reasonable for the four  
16 months that we have been working on this case.

17 But, also, I want to note that the firm has a contract  
18 with Westlaw. We charge based on that special-pricing  
19 contract. If we charged outside of that contract, the  
20 estate would have been billed \$14,000, so this is not a --

21 THE COURT: But isn't there an invoice that they  
22 print that shows you all the charges that you can -- I guess  
23 they're saying there's no invoice or a charge, so they can't  
24 tell.

25 MS. MCPHERSON: We have provided them with

1 information showing that we used Westlaw for USA. But  
2 because it's a special-pricing contract, you can't allocate  
3 a specific amount --

4 THE COURT: They don't make you --

5 MS. MCPHERSON: -- to the --

6 THE COURT: -- type in client and all of that when  
7 you get into it?

8 MS. MCPHERSON: Yes. Yes. We type in client, and  
9 that way if you stay within your plan which we usually do  
10 it's part of your flat fee, and then it's up to the firm to  
11 allocate it to all of the clients who had research.

12 THE COURT: Okay. So have they seen your  
13 allocation, seen the bill on the allocation?

14 MS. MCPHERSON: Yes.

15 THE COURT: Okay.

16 MS. MCPHERSON: The last objection is to PACER  
17 charges, \$1,565.05, and the contention is, well, you get it  
18 for free, and so where is the charge coming from.

19 We do get the documents coming to us, and we get one  
20 free look for ten days is my understanding. But because of  
21 the amount of pleadings in this case, we do not print off  
22 everything nor do we download. It would have just been --  
23 it's just too taxing on our system.

24 THE COURT: Can you look at it from BMC? I mean,  
25 you were paying for it a different way, but that doesn't



1 increase --

2 MS. McPHERSON: We try to use --

3 THE COURT: -- the BMC charge.

4 MS. McPHERSON: -- BMC and also the U.S. Capital  
5 Corp. Web site. However, if we need to make sure that the  
6 information is accurate, we do go to PACER to make sure that  
7 we're looking at the official docket.

8 And, also, with regard to this PACER amount, when we do  
9 have to copy these documents, we do charge our copy rate, so  
10 we have put that in there.

11 THE COURT: Oh, you charge a copy rate as opposed  
12 to what PACER charged you?

13 MS. McPHERSON: No. No, no. It's the PACER  
14 charge --

15 THE COURT: Oh, okay. So this PACER --

16 MS. McPHERSON: -- plus the --

17 THE COURT: -- charge is exactly what PACER has  
18 charged you, what you've paid the court.

19 MS. McPHERSON: It's 8 cents when we have to print  
20 it off. And when we have to download it, it's 8 cents per  
21 page and, you know, capped.

22 But, also, if we print it off, then we do charge a copy  
23 charge because that would be a normal copy charge. It's  
24 just if you were running through the copy machine.

25 THE COURT: Well, I can go to Costco and get the

1 paper pretty cheap, I mean, so I don't know. And of this  
2 PACER charge, how much of that -- I mean, we're such small  
3 potatoes, but there's a principle involved. How much did  
4 PACER actually charge you?

5 MS. MCPHERSON: Your Honor, we would have to  
6 actually go and calculate --

7 THE COURT: Okay. So this charge --

8 MS. MCPHERSON: -- that amount.

9 THE COURT: -- includes your 8 cents a copy plus  
10 what PACER charged you.

11 MS. MCPHERSON: Not in all instances. Just --

12 THE COURT: Okay.

13 MS. MCPHERSON: Just when if there is a print  
14 charge when it was actually printed off, so we would  
15 actually have to go through. I requested that information.

16 THE COURT: Okay.

17 MS. MCPHERSON: But it is a very long --

18 THE COURT: Okay.

19 MS. MCPHERSON: -- process to determine the actual  
20 amount.

21 THE COURT: Okay.

22 MS. MCPHERSON: And in light of the amount, it  
23 wasn't worth the --

24 THE COURT: Yeah. No.

25 MS. MCPHERSON: Okay.

1 THE COURT: Exactly. Okay.

2 Mr. Landis.

3 MR. SCHWARTZER: Oh, your --

4 THE COURT: Oh, sorry.

5 MR. SCHWARTZER: Your Honor, I just wanted to add  
6 one thing that I (indiscernible). Because we're handling  
7 some of the outside nonbankruptcy litigation, for example,  
8 there's litigation in the U.S. District Court in Reno where  
9 USA is a participant, some of these PACER charges -- and we  
10 haven't done the allocation -- is based upon getting  
11 documents from cases that are not the bankruptcy case, and  
12 we don't get those --

13 THE COURT: Right.

14 MR. SCHWARTZER: -- even in the first instance for  
15 free. We have to go on-line with the U.S. District Court --

16 THE COURT: Um-h'm.

17 MR. SCHWARTZER: -- and get it. For example, in  
18 the two cases, there's the Weddell litigation that is  
19 pending in district court. They made a motion to lift stay  
20 here. I felt it was appropriate for me to review the  
21 pleadings in that case.

22 And to do that, I had to get -- I went on PACER because  
23 that's usually the fastest way of getting access to those  
24 kinds of documents, and we didn't allocate it separately  
25 from the --

1 THE COURT: Um-h'm.

2 MR. SCHWARTZER: -- bankruptcy.

3 MS. McPHERSON: And most of those documents are  
4 quite voluminous --

5 THE COURT: Right.

6 MS. McPHERSON: -- in the litigation.

7 THE COURT: Okay.

8 Mr. Landis.

9 MR. LANDIS: You're right. It's not large  
10 dollars, but there is a principle that we're required --

11 THE COURT: You know what I would suggest --

12 MR. LANDIS: -- to uphold.

13 THE COURT: -- in this regard? This sounds like  
14 we need a U.S. Trustee's Office guideline in this regard  
15 just like we used to do on copies because it's an issue I  
16 never even thought about, and we need to make it the same  
17 for everybody.

18 And on one hand, you want to say just charge for PACER,  
19 but let me just say this. I think it's appropriate that any  
20 copy you download even though you get it for free the point  
21 is you can only get it so long, so I have no problem with  
22 whatever the actual PACER charges are. Even if they could  
23 get it for free, they get it.

24 The next question is how much should you allow for  
25 printing the page out in your firm. You know, like at

1 25 cents, I don't think so.

2 But, you know, there is some cost involved with the  
3 paper and the machinery and the printer because we all  
4 like -- that's the problem here. We have to print  
5 everything.

6 That's why I make you guys print this stuff out because  
7 the court doesn't have enough money for paper and printers,  
8 so there is some costs.

9 So this is such small potatoes, but I think this is  
10 something good the U.S. Trustee's Office overall might look  
11 at is now that we have a PACER society what is a fair charge  
12 for everybody to charge for these kinds of things.

13 MR. LANDIS: And, your Honor, you know, there are  
14 a couple of things you need to be careful about, and one is  
15 not awarding bad practices.

16 It's not just free for ten days, and you can download  
17 it and save the PDF. You may not ever need to print it.  
18 But if you need to go back and look at it, you don't then  
19 have to incur the 8-cents-per-page charge through PACER.  
20 You simply go on your own system and look at it.

21 Now, I'm cognizant that we got 1300-plus docket entries  
22 in this case.

23 THE COURT: Oh, yeah. By the way --

24 MR. LANDIS: I --

25 THE COURT: -- we're up to 1400 today.

1 MR. LANDIS: 1400 now? Oh, all right. You know,  
2 if we wait a little longer, it will click up another, but  
3 the fact of the matter remains this.

4 You don't download every single certificate of service.  
5 You don't download docket entries. You don't download  
6 matters that aren't of significance to you as a litigant in  
7 these cases.

8 When you do see something of substance, and you know  
9 it's likely to come back, then you should download it and  
10 save it in PDF format. Then if you actually need to print  
11 it, if you have a copy charge, that's a different matter.

12 Here is what we're faced with regarding PACER. We  
13 didn't know what the actual charge was, number one. Number  
14 two, we couldn't understand and still don't why it can't be  
15 handled for free, and then last but not least there are  
16 other available sources for these that don't cost money.  
17 Especially, matters of substance are posted as the Court  
18 noted on the BMC Web site, and so forth.

19 So we need to be careful not to give carte blanche to  
20 in this case and every other situation that there is going  
21 to be an acknowledged agreed amount that we can just accept  
22 in PACER. We ought to encourage good practices with respect  
23 to the use of that system which is invaluable.

24 And we recognize that as a practical matter you're  
25 going to have to go back and look at the docket to see when

1 something was filed, but that doesn't mean that you then  
2 need to open up to view the document if you can  
3 simply read --

4 THE COURT: Well, in fairness --

5 MR. LANDIS: -- the list.

6 THE COURT: -- though, in the old days, you would  
7 have automatically have had a paper copy to put in your file  
8 because somebody would have served you with it.

9 MR. LANDIS: That was then. This is now, Judge.

10 THE COURT: I know.

11 MR. LANDIS: I can't argue --

12 THE COURT: But the point is --

13 MR. LANDIS: -- that point.

14 THE COURT: -- you're cutting out the cost of  
15 copying, and you would have had that, and, you know, hey, I  
16 guess I am a troglodyte.

17 But, you know, you just can't read these things by  
18 looking on-line, and you're going to have to print them out  
19 sometime. I mean, you're right. Maybe you don't -- well,  
20 even certificates of mailing.

21 The reason we have those is so that somebody can go  
22 back and see was this thing served right. I mean, that's  
23 really important in this case.

24 MR. LANDIS: Then you can look at the docket and  
25 see, and --



1 THE COURT: Oh, yeah, all 1400 entries. But if  
2 you've got, you know, when --

3 MR. LANDIS: Well, but if you know when it was  
4 served, you can narrow the search on CM/ECF. You know that,  
5 too, Judge.

6 THE COURT: Yeah. But --

7 MR. LANDIS: And you can at least narrow it to  
8 say --

9 THE COURT: I'm not so sure that I want to  
10 interfere with somebody's good case management. If somebody  
11 wants to -- it seems to me a reasonable way to manage a case  
12 is to take every piece of paper and file it like you used to  
13 with a good paralegal and like the appropriate motions.

14 Another way is to do it on your computer. That's kind  
15 of case management, but the bottom line is we're spending  
16 more arguing about this with all the attorneys in here than  
17 this is worth.

18 MR. LANDIS: The --

19 THE COURT: I think the answer is I would like  
20 your office to come up with some protocol maybe in this case  
21 and then, you know, really for all over.

22 What are other districts doing? I mean, it's a  
23 reasonable issue. We now have PACER in place. We now have  
24 electronic filing in place. It's a reasonable issue.

25 I'm going to go ahead and allow it for now. Oh, I do

1 want an invoice, though, to see how much you charged and  
2 then an explanation, subject to an explanation of why you  
3 charged what you charged.

4 MR. LANDIS: And going back through the  
5 discussion, then, Judge, we do have Westlaw, and they have  
6 yesterday provided us with the Westlaw charges.

7 My concern is is that this is overhead, Judge. It's a  
8 flat fee that they have for an amount of service, and  
9 they're now trying to allocate it among various cases.

10 That I think under Gingy (phonetic) and the other cases  
11 that have addressed the difference between overhead and  
12 actual cost in a case --

13 THE COURT: Well, gee --

14 MR. LANDIS: -- have suggested this --

15 THE COURT: -- unfortunately, Gingy was written in  
16 the days since I've been here so long --

17 MR. LANDIS: I know.

18 THE COURT: -- before we had Westlaw as a common  
19 practice.

20 MR. LANDIS: It --

21 THE COURT: I mean, Westlaw was new.

22 MR. LANDIS: Yeah.

23 THE COURT: I mean, the old idea was you don't  
24 allocate for the libraries and whatever, and we did allow --  
25 Westlaw has always been allowed.

1           So it doesn't make sense to say, all right, so you can  
2 charge for -- you've got to charge on the billing rate which  
3 makes it twice as high as if you did it conservatively and  
4 just did it an overhead rate.

5           MR. LANDIS: Well, your Honor, the real question  
6 is whether it's even compensable at all as overheard versus  
7 whether it's attributable to this particular case.

8           THE COURT: Well, if you --

9           MR. LANDIS: We --

10          THE COURT: -- you want to spend the legal  
11 research time (indiscernible) whether Westlaw is compensable  
12 in this case, we're going to (indiscernible) on a lot of  
13 fees.

14          MR. LANDIS: We want to raise the issue because  
15 it --

16          THE COURT: I'm not doing --

17          MR. LANDIS: -- has to be raised.

18          THE COURT: -- the research.

19          MR. LANDIS: All right. Fair enough, your Honor,  
20 but the fact is is that we'll raise the issue now and deal  
21 with it when it comes up again.

22          THE COURT: Well, no. I mean, the point is if you  
23 want to raise the issue -- now, I'm not saying it's not a  
24 legitimate issue. I'm just saying we got to keep  
25 perspective in this case.

1 MR. LANDIS: I understand, your Honor.

2 THE COURT: And, also, in light of the fact that  
3 the U.S. Trustee's Office guidelines haven't really I don't  
4 think adequately dealt with this issue, I think before --  
5 you know, if you want to make policy for the United States  
6 and what happens with Westlaw, so be it.

7 And there is certainly a legitimate issue, but is it  
8 appropriate to do it here as opposed to giving some  
9 consideration about what should be done either on a national  
10 level and a local level. That's my --

11 MR. LANDIS: I --

12 THE COURT: -- comment.

13 MR. LANDIS: I get the point, your Honor, and  
14 we'll appreciate, actually, the invitation for additional  
15 information, and I'll address it at an appropriate level.

16 I can guarantee you that I don't make policy for the  
17 Office of the United States Trustee. I can also assure you  
18 that I believe that there is some pretty specific case law  
19 in addition to Gingy at the Ninth Circuit level that makes  
20 the distinction between what is overhead and what is, in  
21 fact, an allocable cost in a particular case.

22 It strikes me that if Westlaw is a flat fee, and there  
23 is an effort to allocate it to this particular case that  
24 takes it out of --

25 THE COURT: But do we --

1 MR. LANDIS: -- kind of --

2 THE COURT: -- really want them to change their  
3 contract, so that they now pay on a per-cost basis?

4 MR. LANDIS: Your Honor, I --

5 THE COURT: You go on-line, and you do it that  
6 way.

7 MR. LANDIS: I deal --

8 THE COURT: Do we really want to encourage that?

9 MR. LANDIS: I deal with the facts as they're  
10 brought to me --

11 THE COURT: No, no.

12 MR. LANDIS: -- in a case.

13 THE COURT: But I'm serious. Do you really want  
14 to deal -- I mean, you're right. You're looking at the law  
15 perspective. Do you really want to do that?

16 MR. LANDIS: Your Honor, the fact of the matter is  
17 when the issue is presented as to whether an expense in a  
18 case albeit a relatively-minor sum --

19 THE COURT: Right. But the --

20 MR. LANDIS: -- it is --

21 THE COURT: -- U.S. Trustee --

22 MR. LANDIS: -- compensable or not as an  
23 expense --

24 THE COURT: Well --

25 MR. LANDIS: In order for it to be compensated, it

1 has to not be overhead.

2 THE COURT: Right.

3 MR. LANDIS: That's my point --

4 THE COURT: Um-h'm.

5 MR. LANDIS: -- your Honor.

6 THE COURT: Sure. But the U.S. Trustee guidelines  
7 are not done in a vacuum nor are our fee-applications  
8 guideline.

9 It was easy in the old days to say a library was  
10 overhead because you had to have this set of books  
11 regardless.

12 Now, with electronic research, you look at a specific  
13 issue, and you are charged for a specific amount of time  
14 unless you have a contract which will make it cheaper. Now,  
15 it would certainly -- and is that overhead or is it not  
16 overhead?

17 But it seems to me unfair to say if a person wants to  
18 charge per research on every project, so they know they get  
19 paid, and it costs everybody more is that really what you  
20 want to encourage as opposed to people using flat rates.

21 MR. LANDIS: I don't know that I'm going to  
22 establish policy in this dialog with the Court in this case.  
23 I understand and appreciate the concerns that you're  
24 addressing.

25 I'm faced with just an application on these

1 particular --

2 THE COURT: Okay.

3 MR. LANDIS: -- sets of facts, and what I'm  
4 suggesting to you is what we saw on our review --

5 THE COURT: Sure.

6 MR. LANDIS: -- indicates that it, in fact, is  
7 overhead, therefore, not compensable under existing  
8 Ninth Circuit law, not so much the guidelines. That was the  
9 reason for the objection, your Honor.

10 With respect to -- I just want to move quickly through  
11 this --

12 THE COURT: Um-h'm.

13 MR. LANDIS: -- because it is not a huge sum.  
14 With respect to the conference room, we have an invoice. We  
15 understand that now.

16 Delivery charges, that is a flat fee that they have  
17 arranged. That is within the scope of Gingy. That is  
18 overhead for purposes of our objection.

19 With respect to the fees objection, I think we've got  
20 some explanation here now. The question is whether or not  
21 it's sufficient. That's up to the Court to decide based on  
22 your review of their application.

23 You have based on our summary only about -- what are we  
24 talking about here -- seven hours, so it's not a huge amount  
25 of money, but it is something that requires the Court's

1 consideration.

2 The total fees objected to are \$3,187. We believe that  
3 the objection is viable based on the analysis that we have  
4 put together.

5 And, Judge, for purposes of this hearing also and your  
6 ease of review if you choose, we have prepared a similar  
7 summary, a timekeeper summary, to what we did in a more  
8 voluminous way in Ray, Quinney & Nebeker.

9 If I can approach?

10 THE COURT: Okay. But we just have this one  
11 thing, right, two-tenths of an hour?

12 MR. LANDIS: There is clerical, there is lumping,  
13 and there is nonlegal services.

14 THE COURT: Okay.

15 MR. LANDIS: And I have broken them down for you  
16 by detail.

17 THE COURT: Okay.

18 MR. LANDIS: So if you want to use it to compare  
19 it, it basically will help you do it --

20 THE COURT: Okay.

21 MR. LANDIS: -- more quickly.

22 If I can approach?

23 THE COURT: Um-h'm.

24 (Colloquy not on the record.)

25 THE COURT: Okay.



1 (Colloquy not on the record.)

2 MR. LANDIS: Again, Judge, this is simply a  
3 summary of the items that we objected to based on the fee  
4 application.

5 As a summary, we believe it's admissible under  
6 Rule 1009. We would move to have it admitted for  
7 purposes --

8 THE COURT: Okay.

9 MR. LANDIS: -- of today's hearing.

10 THE COURT: It's admitted.

11 MR. LANDIS: Last but not least, Judge, you were  
12 talking about having fees for Schwartzer & McPherson allowed  
13 in connection with the interpleader action. I'm very  
14 concerned about that.

15 There is a special counsel that has been appointed to  
16 serve in the interpleader action, and there is a reason for  
17 that.

18 The reason for that is there is a conflict for the  
19 Schwartzer & McPherson Law Firm. They ought not be getting  
20 paid in connection with the interpleader action. I'm  
21 concerned that the Court not lose track of that fact.  
22 Mr. Huston exists because of the conflict.

23 And last but not least in connection with our objection  
24 that wasn't addressed is we want to make certain that if  
25 these fees are allowed at any amount that it's on an interim

1 basis and without prejudice to our continuing objection  
2 regarding the conflict question.

3 THE COURT: Okay.

4 MR. LANDIS: Thank you, your Honor.

5 THE COURT: All right. I'm going to allow the  
6 fees. Again, as everybody knows in any case, these are all  
7 interim fees.

8 On the clerical issues, though, I will overrule that  
9 objection. Arguably, the clerical person could have talked  
10 to Mr. Fenneran, but it would have required Mr. Schwartzner  
11 saying please give Mr. Fenneran a call.

12 And then the person would have responded back saying  
13 Mr. Fenneran said X, so I don't think it would have saved  
14 any time, two-tenths of an hour. Also, I think Mr. Fenneran  
15 deserves to be talked to by the attorney.

16 I mean, the news article, at first, that hits you in  
17 the face, but, boy, you're absolutely right. I mean, you  
18 know, in the media coverage of this, it's important to know  
19 whether or not how it's being covered, is it being covered  
20 correctly.

21 Lumping, the explanation of these, I certainly  
22 appreciate you bringing the issue to my attention. The key  
23 to my mind is can I tell what happened, and I think with  
24 those explanations -- and I understand it required further  
25 explanation.

1 With those explanations, I can understand what's  
2 happening. I can understand what tasks it should be billed  
3 to, so that to me is sufficient.

4 Again, everybody keep in mind that to try and avoid  
5 that nonlegal. With the explanation that it was reviewing  
6 the schedules, I'll allow that.

7 Now, on these expenses, I think the way to deal with  
8 this is I'll temporarily allow them. I think the U.S.  
9 Trustee's Office should make overall a list of what you  
10 believe is overhead and not overhead in the context of this  
11 case that would be applicable to all the professionals, so  
12 that we treat all the professionals alike.

13 And that if we have to have briefing at the end of the  
14 case we can have one set of attorneys write one set of  
15 briefs and resolve the issue and because they're certainly  
16 legitimate issues, you know, and they do add up, and they're  
17 important issues to bring up, but we must'nt lose  
18 perspective.

19 And I think it would be good for your office to sit  
20 down and take a look at in the changing world what is or is  
21 not, and then that gives the attorneys the time to talk with  
22 you and talk among themselves, so that's allowed.

23 But, again, all objections are preserved, but,  
24 specifically, that objection is preserved, and we'll deal  
25 with that if necessary at I guess probably the final

1 hearings.

2 So everybody need to keep in mind that that's going to  
3 be one of the issues they're raising as to all of you,  
4 PACER, Westlaw, delivery charges. All right.

5 We need to take a half-hour break if we could. We'll  
6 come back probably about 45, a half hour to 45 minutes.  
7 Which would you prefer, a half hour or 45 minutes?

8 (Colloquy not on the record.)

9 MS. CARLYON: Tell us a time, and we'll be here.

10 THE COURT: Okay. A quarter of, then, sound good?

11 MS. CARLYON: Thank you, your Honor.

12 UNIDENTIFIED SPEAKER: Thank you, your Honor.

13 THE COURT: Okay. There's a --

14 (Colloquy not on the record.)

15 THE COURT: -- cafeteria downstairs. There's a  
16 couple across the street.

17 (Colloquy not on the record.)

18 THE CLERK: All rise.

19 (Recess at 12:59:05 p.m.)

20 (Thereupon, the portion requested to be transcribed  
21 was concluded at 12:59:05 p.m.)

22

23

24

25

1 I certify that the foregoing is a correct transcript  
2 from the electronic sound recording of the proceedings in  
3 the above-entitled matter.

4  
5  
6 /s/ Lisa L. Cline

11/01/06

7 Lisa L. Cline, Transcriptionist

Date